



## **Case Summary<sup>1</sup>**

Stephen L. Lagenour (“Husband”) appeals the trial court’s property division in his dissolution proceedings with Diana K. Ledgerwood (“Wife”). Husband argues that the trial court abused its discretion by failing to grant him spousal maintenance and in equally dividing the marital property. Finding that the trial court acted within its discretion, we affirm the judgment of the trial court.

### **Facts and Procedural History**

Husband and Wife were married on September 6, 1980, and have two children. Husband and Wife own a marital residence in Odon, Indiana. Wife’s mother originally owned the marital residence but conveyed the property to Husband and Wife, retaining a life estate for herself. After moving into the marital residence, Husband and Wife built an addition onto the home, which was financed by money that Wife brought into the marriage.

Throughout their marriage, Wife was consistently employed. Wife worked as a dental assistant for approximately one and one-half years and has worked as a nurse for Bloomington Hospital for twenty-three and one-half years. Wife does not receive a bonus from Bloomington Hospital and has reached the top of her pay scale, earning \$48,868.34 per year. Wife commutes approximately seventy miles to and from the hospital on a daily basis in a car that has 149,000 miles.

Husband was sporadically employed throughout their marriage working for at least five different companies. On October 24, 2003, the Social Security Administration

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<sup>1</sup> Indiana Appellate Rule 51(D) provides that “[a]ll Appendices shall be bound separately from the brief. . . . The document shall be bound in book or pamphlet form along the left margin.” Appellant’s Appendix Volume 1 is contained within a three ring binder and therefore is not bound.

concluded that since December 10, 2001, Husband has been disabled. Husband receives approximately \$1,288.00 per month in disability benefits, approximately \$125 per month in retirement income, and Medicaid benefits.

On December 6, 2005, Wife filed a petition for dissolution of the marriage. At the evidentiary hearing, the parties presented evidence regarding the value of the marital estate. On July 13, 2007, the trial court entered its Order, which included findings of fact and conclusions thereon. The Order provides, in relevant part:

9. That during periods of Husband's unemployment in the marriage, child support was paid upon Husband's children from a prior marriage from Wife's earnings during such periods of time. That Wife worked a second job in order to provide for the educational expenses of the parties' emancipated child . . . .

10. That Wife testified that she would assume the total support responsibility for the parties' child, . . . which such support obligation includes, without limitation, payment of all expenses incidental to the child's attendance at college.

11. That . . . the living expenses of Wife and the living and educational expenses of the parties' daughter . . . are nearly as much as Wife's yearly gross income. Wife has been able to pay her and her daughter's monthly expenses with the assistance of Wife's mother, who resides in the Odon, Indiana house and residence with Wife by virtue of reserving a life estate when the real estate was conveyed to Husband and Wife by Wife's mother.

12. That Husband had paid no child support or educational expenses for [daughter] during the pendency of this action.

13. That due to Husband's current income situation and Husband's on-going medical expenses, justifiable reason exists to deviate from the Indiana Child Support Guidelines, and Husband shall not be required to pay the Forty-seven Dollars (\$47.00) per week child support.

14. That shortly before the filing of Wife's Petition for Dissolution of Marriage herein, Husband, without Wife's consent or knowledge, procured a cash advancement on the mortgage owing to Indiana University Employee's Federal Credit Union in the amount of Sixteen Thousand Six

Hundred Twenty-eight Dollars and Two Cents (\$16,628.02), which increased the mortgage balance upon the residential real estate located in Odon, Indiana to Thirty Thousand Dollars (\$30,000.00).

17. That while Husband and Wife were both employed outside of the home throughout the marriage, Husband's employment was somewhat sporadic and Wife's employment income was the stabilizing economic factor in the marriage. In addition, Wife provided most of the homemaker function and a large share of the parenting responsibilities during the marriage.

19. That the net value of the marital estate is the sum of Two Hundred Fifty-seven Thousand One Hundred Three Dollars and Eighty-eight Cents (\$257,103.88).

21. That Husband has requested that he be awarded permanent maintenance to be paid by Wife. Notwithstanding Husband's request and evidence submitted in support thereof, Wife does not possess the financial ability to meet her and [her daughter's] living expenses and [daughter's] college expenses while attempting to discharge any amount of maintenance to be paid to Husband.

Appellant's App. p. 13-14. We summarize the trial court's division of the assets and liabilities as follows:

Husband receives:

1. 5 acres Dubois County (\$18,375.00)
2. Duke Energy Stocks (\$27,923.00)
3. 1983 Holiday Rambler RV (\$2,500.00)
4. 2003 Ford Truck (\$9,987.00)
5. 1996 Geo Metro (\$525.00)
6. 1989 Suzuki Sidekick (\$250.00)
7. 2005 John Deere Tractor & Equipment (\$16,700.00)
8. 14' Car Hauler (\$400.00)
9. Cash Advance IU Credit Union Home Equity Loan (\$16,628.00)

10. 2005 Tax Refund (\$1,000.00)

11. Husband's Personal Property (\$9,977.50)

12. Correction Corporation of America 401(k) Plan (\$2,596.02)

13. Husband's Duke Energy Retirement Plan (\$19,987.64)

14. Wife's Bloomington Hospital Employees' Pension Plan (\$7,202.78)

Total: \$134,051.94

Husband Pays:

1. John Deere Tractor (\$5,500.00)

Net: \$128,551.94

Wife receives:

1. Less Value of Wife's Mother's Life Estate (\$86,979.20)

2. 2002 Ford Mustang (\$9,552.00)

3. 1999 Chevrolet Tracker (\$3,430.00)

4. Personal Jewelry (\$350.00)

5. AIG VALIC 401(k) (\$11,191.79)

6. 2005 Tax Refund (\$1,400.00)

7. Wife's Personal Property (\$3,865.00)

8. First National Bank Savings (\$4,700.00)

9. Wife's Bloomington Hospital Employees' Pension Plan (\$57,214.12)

Total: \$178,682.11

Wife Pays:

1. IU Credit Union Mortgage & Home Equity Loan (\$30,000.00)

2. Forum Credit (Mustang Loan) (\$12,900.00)
3. CHASE Credit (\$1,140.92)
4. Sears Credit (\$572.25)
5. Dr. Greg Berger (\$817.00)
6. Vincennes University Tuition, books, and college expenses (\$4,700.00)

Net: \$128,551.94

Appellant's App. p. 15-17. Husband now appeals the denial of his request for spousal maintenance and the trial court's equal division of the marital property.

### **Discussion and Decision**

On appeal, Husband argues that the trial court erred by failing to award him spousal maintenance and in equally dividing the marital property.

#### **I. Spousal Maintenance**

Husband contends that the trial court erred in failing to award him spousal maintenance. The trial court's power to award spousal maintenance is wholly within its discretion, and we will reverse only when the decision is clearly against the logic and effect of the facts and circumstances of the case. *Fuehrer v. Fuehrer*, 651 N.E.2d 1171, 1174 (Ind. Ct. App. 1995), *trans. denied*. "The presumption that the trial court correctly applied the law in making an award of spousal maintenance is one of the strongest presumptions applicable to the consideration of a case on appeal. *Id.* Here, the trial court entered findings and conclusions pursuant to Indiana Trial Rule 52(A). We will not set aside the trial court's findings unless they are clearly erroneous. *In re Marriage of Erwin*, 840 N.E.2d 385, 389 (Ind. Ct. App. 2006). In our review, we must determine

whether the evidence supports the findings and whether the findings support the judgment. *Id.* When reviewing the trial court's findings, we neither reweigh the evidence nor reassess the credibility of the witnesses. *Id.* A trial court's findings are clearly erroneous only when the record is devoid of evidence or reasonable inferences to support them. *Id.*

The occasions under which a trial court may order spousal maintenance payments are limited. *Id.* at 390. One circumstance, warranting what is often referred to as "incapacity maintenance," is illustrated in Indiana Code § 31-15-7-2(1). This provision provides:

If the court finds a spouse to be physically or mentally incapacitated to the extent that the ability of the incapacitated spouse to support himself is materially affected, the court *may* find that maintenance for the spouse is necessary during the period of incapacity, subject to further order of the court.

(Emphasis added). Upon a finding of incapacity, the trial court may award maintenance to the spouse in need during the period of incapacity. *Erwin*, 840 N.E.2d at 390. Nevertheless, "given the language of the statute, a maintenance award is not mandatory." *Cannon*, 758 N.E.2d at 527.

Here, Husband maintains that he has

[d]emonstrated his disability, which [Wife] did not dispute. He testified as to his inability to work at any job. The trial court's decision was clearly against the logic and effect of the facts and circumstances of this particular case. [Husband] is entitled to spousal incapacity maintenance from [Wife], and requests this Court reverse the decision of the trial court, and find that he should have been awarded spousal maintenance in the amount of two hundred fifty dollars (\$250) per month.

Appellant's Br. p. 18. We disagree. The evidence in the record sufficiently supports the trial court's determination that Wife is not financially able to pay Husband spousal maintenance. Wife's gross income is \$48,868.00 per year. Wife does not receive a bonus and has reached the ceiling in terms of her pay scale. The living expenses of Wife and the living and educational expenses of the parties' daughter are nearly as much as Wife's gross annual income. Additionally, Husband is not required to pay any child support or college expenses for the parties' daughter. While we are sympathetic to Husband's situation, we likewise acknowledge that Wife simply is not in a financial position to provide spousal maintenance. The trial court's decision is not clearly erroneous.

## **II. Division of Marital Property**

Husband also argues that the trial court erred in equally dividing the marital property. More specifically, Husband maintains that the "trial court should have weighed the statutory factors enumerated in [Indiana Code § 31-15-7-5] against the presumption of an equal division." Appellant's Br. p. 21. In other words, Husband contends that "the Court ignored relevant evidence about [Husband] and his condition, as well as evidence that effectively neutralized some of the findings relied upon in making an equal division of the parties' marital evidence." *Id.*

Indiana Code § 31-15-7-5 provides:

The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:

- (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
- (2) The extent to which the property was acquired by each spouse:
  - (A) before the marriage; or
  - (B) through inheritance or gift.
- (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
- (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
- (5) The earnings or earning ability of the parties as related to:
  - (A) a final division of property; and
  - (B) a final determination of the property rights of the parties.

Subject to the statutory presumption that an equal distribution of marital property is just and reasonable, we observe that the disposition of marital assets is committed to the sound discretion of the trial court. *Helm v. Helm*, 873 N.E.2d 83, 89 (Ind. Ct. App. 2007). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* An abuse of discretion also occurs when the trial court misinterprets the law or disregards evidence of factors listed in the controlling statute. *Id.* We will reverse a property distribution only if there is no rational basis for the award and, although the circumstances may have justified a different property distribution, we may not substitute our judgment for that of the dissolution court. *Id.* at 89-90.

In this case, Husband maintains that "there is nothing in the trial court's findings to allow the Court to determine that the Court even considered the factors enumerated in

[Indiana Code § 31-15-7-5].” Appellant’s Br. p. 23. We disagree. Initially, we note that the trial court was not required to make specific findings on the statutory factors listed in Indiana Code § 31-15-7-5 because it decided not to deviate from the presumption of equal property division. *Hyde v. Hyde*, 751 N.E.2d 761, 766 (Ind. Ct. App. 2001). Although not required to give a thorough discussion of each statutory factor explaining why an equal division is justified, the trial court nevertheless made specific findings about the factors. The record reflects that the trial court did examine and take into consideration the contribution of each spouse, the economic circumstances of each spouse, the conduct of the parties during the marriage, and the earnings or earning ability of the parties. After assessing this evidence, the trial court decided to equally divide the marital property. The trial court was in a much better position than we are to assess this evidence, and we will not disturb its judgment.

Affirmed.

MAY, J., and MATHIAS, J., concur.